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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Patrick J. Sullivan, et al.	
Serial No.:	08/889,889	
Filing Date:	July 8, 1997	
Confirmation No.	4013	
Group Art Unit:	2613	
Examiner:	Anand Shashikant Rao	
Title:	*Video Surveillance System and Method*	

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Commissioner of Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

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Dear Sir:

Appeal Brief

Appellants have appealed to this Board from the decision of the Examiner, contained in a final Office Action mailed April 21, 2004, finally rejecting Claims 1-42. Appellants mailed a Notice of Appeal on June 21, 2004. Appellants respectfully submit this Appeal Brief in triplicate under 37 C.F.R. § 1.17(c).

REAL PARTY IN INTEREST

The real party in interest for this Application under appeal is Visilinx Inc. as shown by assignment recorded under Reel/Frame 011510/0550 on February 5, 2001.

RELATED APPEALS AND INTERFERENCES

This appeal is related to a pending appeal regarding U.S. Patent Application No. 08/677,513 (the '513 Appeal), filed concurrently with this appeal on August 23, 2004. Other than the '513 Appeal, there are no other appeals or interferences known to the Appellants, the undersigned Attorney for Appellants, or the Assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Claims 1-42 were rejected in a final Office Action mailed April 21, 2004 (the "Final Office Action"). Claims 1-42 are all presented for appeal and are set forth in the Appendix.

STATUS OF AMENDMENTS

Appellants filed no amendments after the Final Office Action.

SUMMARY OF INVENTION

A system for capturing and presenting video and data from a financial transaction includes a client that performs the financial transaction, generates video and data of the financial transaction, and then transmits the video and data to a server using a communications network. *See,* page 8, lines 1-8; page 16, lines 1-26; Fig. 1. In addition, the client may store files containing captured video and data from one or more financial transactions in a local database and then transmit this information to the server at appropriate times. *See,* page 10, lines 18-22; page 14, line 4 to page 15, line 2. The server receives and displays the data and video from the client. *See,* page 8, lines 9-12; page 17, lines 6-11. A single server may receive video and data from multiple clients, and furthermore, the server may store the information from the clients in a centralized database. *See,* page 10, lines 21-26. In addition, the server may have a graphical user interface (GUI) that provides various analytical and reporting functions for processing information from the clients. *See,* page 10, line 26 to page 11, line 2; page 18, lines 11-19. This system may be used with any suitable

electronic device generating data from a financial transaction, such as an automated teller machine (ATM) or point-of-sale (POS) device. *See, e.g.,* page 8, lines 13-18.

ISSUES

A.   Whether Claims 1-3, 5-13, 15-24, 26-32, and 34-42 are anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 5,973,731 issued to Schwab ("*Schwab*").

B.   Whether Claims 4, 14, 25, and 36 are patentable under 35 U.S.C. § 103(a) over *Schwab* in view of U.S. Patent No. 5,585,839 issued to Ishida, et al. ("*Ishida*").

GROUPING OF CLAIMS

Pursuant to 37 C.F.R. § 1.192(c)(7), Appellants request that the following claims be grouped together for purposes of this appeal:

I.   Group 1: Claims 1-21. Claims 1-21 may be deemed to stand or fall together for purposes of this appeal.

II.   Group 2: Claims 22-42. Claims 22-42 recite additional and separately patentable limitations that are not disclosed in the cited references. Appellants request that Claims 22-42 be deemed to stand or fall together for purposes of this appeal.

ARGUMENT

This Application finds itself presented now for the second time to the Board. The present claims were previously rejected as anticipated by *Ishida*, and Appellants appealed that rejection in a brief filed in May of 2000. In a Decision on Appeal, the Board found for the Appellants and reversed the rejection of the claims. After the Decision on Appeal, the Examiner introduced *Schwab* and rejected the claims using *Schwab* both alone and in combination with *Ishida*. Appellants responded to the rejection by pointing out the dramatic differences between Appellants' claims and *Schwab* in addition to the inappropriateness of the proposed combination. The Examiner subsequently affirmed the rejection in the Final Office Action, and thus Appellants have now appealed the rejections to the Board.

I.   Group 1 - Claims 1-21.

Claims 1-21 implicate both the anticipation rejection, based solely upon *Schwab*, and the obviousness rejection, based upon the combination of *Schwab* and *Ishida*.   Thus Appellants address both of these issues with respect to Claims 1-21.

A.   Claims 1-3, 5-13, and 15-21 are patentable over *Schwab*, because *Schwab* fails to describe, either expressly or inherently, every element of these claims.

To support a rejection under 35 U.S.C. §102(e), the Examiner must show that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (quoting *Verdegaal Bros. v. Union Oil at col. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)). Appellants respectfully submit that *Schwab* fails to teach each and every element of any of Appellants' claims. Consider Appellants' Claim 1, which recites:

> 1.   A video surveillance system, comprising:
> a client operable to perform a financial transaction, the client further operable to generate data from the financial transaction, the client having a camera operable to generate video of the financial transaction, the client operable to transmit the data and video using a communications network; and
> a server coupled to the client using the communications network, the server operable to receive the data and video from the client and to display the video and data in real-time.

Schwab fails to teach, either expressly or inherently, each and every element of this claim, and the rejection under Section 102 is therefore inappropriate.   In general, *Schwab* discloses a system for secure identification of items or individuals taking part in transactions. See *Schwab*, at column 1, lines 9-14. To provide secure identification, *Schwab* proposes a central database of pictures that can be used for later identification of individuals or items. *Id.*, at column 1, lines 45. At the time of a transaction, a picture can be downloaded from the central server and then compared with the actual person or item. *Id.* "Broadly, the system may be used in conjunction with individuals or products which may be identified by comparison of the subject item with a pre-existing image previously entered into the central database." *Id.*, at column 4, lines 8-13. Thus, for example, a customer attempting to make a purchase with a credit card can be compared to a pre-existing picture of the person authorized

for the credit card. This secure identification technique is a far cry from the video surveillance system as claimed in Appellants' claims.

For example, consider the following language from Claim 1:

> a client operable to perform a financial transaction, the client further operable to generate data from the financial transaction, the client having a camera operable to generate video of the financial transaction, the client operable to transmit the data and video using a communications network;

As teaching of these aspects, the Examiner points to the client (transaction terminal) of *Schwab*. *Final Office Action*, at pages 2-3. The Examiner then attempts to recreate the claimed features by piecing together various portions of *Schwab's* disclosure. For example, the Examiner stitches together *Schwab*'s description of how to populate an image database with the description of performing a transaction in an attempt to show the claimed aspects of generating and transmitting video of a financial transaction for receipt by a server. *Id.*, at page 3. However, the referenced portion of *Schwab* simply details how to capture images and populate an image database such that the images can later be used for secure identification. *See Schwab*, at column 4, lines 23-33 and 50-63. These images are not images of financial transactions, and these teachings of *Schwab* in no way show the generation of video of a financial transaction and the transmission of this video along with data from the financial transaction for receipt at a server. Simply put, the transaction terminal of *Schwab* does not provide for the claimed aspects of the client in Appellants' Claim 1.

As another example, consider the following language from Claim 1:

> a server coupled to the client using the communications network, the server operable to receive the data and video from the client and to display the video and data in real-time.

Appellants questioned the sufficiency of *Schwab*'s teaching with respect to this server element, to which the Examiner replied in the Final Office Action:

> Thirdly, the Applicant argues that Schwab fails to teach "a server coupled to the client using a communication network..." as in the claims (Paper 16: page 10, lines 24-33; page 11, lines 1-2). The Examiner respectfully disagrees. It is noted that the citations question [sic] show the flow of data, and the kind of data being sent to the server is further qualified in the client's generation of a local database wherein said database is concerned with a data and associated video generated in relation to a financial transaction. It is noted that the pre-existing image as sent to the client would relate to the a [sic] user's prior transaction data for subsequent verification at the client site in

order resolve [sic] disputes between the client user, and a customer or the originator of the financial transaction (Schwab: column 7, lines 5-15). Additionally, just in general, generation of a location database of financial transactions at the client could easily be sent to the central server to update the central database as in the claims (Schwab: column 4, lines 45-50). Accordingly, the Examiner maintains that this limitation is met as well.

Final Office Action, at pages 3-4. Even though this statement speculates as to operations that could potentially occur in the system of *Schwab* (as opposed to actual teachings of *Schwab*), the Examiner fails to mention the actual aspects required by the claim. For example, the Examiner fails to address the requirements of receiving data and video and displaying the data and video in real time. Not surprisingly, since *Schwab* fails to teach this operation, either expressly or inherently.

For at least these reasons, Appellants respectfully submit that *Schwab* does not teach, either expressly or inherently, all elements of any of the independent claims. Therefore, Appellants respectfully request the Board to reverse the Examiner's rejection under Section 102 to Claims 1 and 11 and their respective dependent claims.

B.   Claims 4 and 14 are patentable over *Schwab* in view of *Ishida* because the combination of these references is improper and because these references fail to teach or suggest of all elements these claims.

To establish a *prima facie* case of obviousness, the Examiner must satisfy three criteria. First, there must be suggestion or motivation in the prior art to modify or combine the references. Second, there must be a reasonable expectation of success. Third, the combination must teach or suggest all elements of the rejected claims. *In re Vaeck*, at 947 F.2d 488 (Fed. Cir. 1991). The proposed combination fails all three criteria.

First, the prior art fails to suggest or motivate the proposed combination of *Schwab* and *Ishida*. The factual inquiry whether to combine references must be thorough and searching. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52 (Fed. Cir. 2001). This factual question cannot be resolved on subjective belief and unknown authority, but must be based on objective evidence of record. *See In re Lee*, at 277 F.3d 1338, 1343-44 (Fed. Cir. 2002).

Nothing in *Schwab* or *Ishida* remotely suggests or motivates the proposed combination. As discussed above, *Schwab* teaches an image-based secure identification system that includes a central image server. On the other hand, *Ishida* discloses a video

conversation/monitoring system providing communications between a user at an end station and a guide at a center station. Through the *Ishida* system, a user at an end station may make inquiries to the guide and receive information, such as maps, from the center station. *See, e.g., Ishida*, at Column 6, lines 2-39. These two references address very different fields of endeavor - secure identification versus video conferencing.

Not surprisingly, the Examiner has failed to identify any motivation in the references or in the prior art for the proposed *Schwab-Ishida* combination. In introducing *Ishida*, the Examiner stated that "it would have obvious [sic] for one of ordinary skill in the art to incorporate Ishida's generating of audio files along with the associated video files in order to allow for the terminal user of a remote client in Schwab to communicate verbally with the server while conducting a financial transaction." *Office Action of November 7, 2003*, at page 6. This statement, however, simply asserts that a potential benefit obtained from the combination makes the combination obvious, which is the hallmark of impermissible hindsight reconstruction.

When confronted with this deficiency, the Examiner responded in the Final Office Action by pointing out the disclosure of a video-phone in *Schwab*. *Final Office Action*, at page 5. *Schwab* discusses the use of a video-phone in connection with a customer making a purchase from a transaction terminal while not physically present at the transaction terminal. *Schwab*, at column 2, lines 1-25. By having a video-phone connection, the operator of the transaction terminal may visually compare the person on the video-phone with a secure image retrieved from a central image database. *Id*. However, this mere mention of video-phones in no way suggests or motivates the combination with *Ishida*. There is no suggestion or motivation for the combination, and thus the proposed *Schwab-Ishida* combination fails the first requirement for a *prima facie* case of obviousness.

Second, with respect to a reasonable expectation of success, the proposed combination also fails. As mentioned above, *Schwab* discloses secure identification using a central image database, while *Ishida* discloses video conferencing between remote end stations and a central station. The image database of *Schwab* has no need for any audio related to financial transactions. Rather, audio information, if stored on the central image server, would unnecessarily expand the scope and size of data maintained in *Schwab*'s image database. Moreover, even if audio information was sent to the central image database, neither *Schwab* nor *Ishida* provide any clue as to how that information would be used. Thus

with respect to the second requirement for a *prima facie* case of obviousness, the proposed *Schwab-Ishida* combination fails.

Third, even if considered appropriate for arguments sake, the proposed combination fails to teach or suggest all elements of the claims. Consider Appellants' Claim 4, which recites:

> 4.   The system of Claim 1, wherein the client comprises a microphone operable to generate audio of the financial transaction, the client operable to transmit data, video, and audio over the communications network.

Coupled with the server's ability to display information in real time, as recited in Claim 1, this provides powerful functionality. As discussed above with respect to the anticipation rejection, *Schwab* fails to disclose all elements of Appellants' Claim 1. The introduction of *Ishida* does not provide the missing elements of Claim 1, nor does *Ishida* introduce the recited elements of Claim 4. Thus the Examiner's proposed combination also fails the third requirement for a *prima facie* case of obviousness. For any one of these reasons, the proposed *Schwab-Ishida* combination is thus improper, and Appellants respectfully request the Board to reverse the Section 103 rejection of Claims 4 and 14.

II.   **Group 2 - Claims 22-42.**

Claims 22-42 recite additional and separately patentable limitations that are not recited in independent Claims 1 and 11 and that are not disclosed in the cited references. For example, Claim 22 recites a system having a client "operable to accumulate and store the data and video as a digital file," and Claim 33 recites a method including steps of "accumulating generated data and video for multiple financial transactions; storing the accumulated data and video as a digital file until the client connects to the server; [and] transmitting the digital file using a communications network upon connection of the client and the server." Claims 23-32 depend on Claim 22, and Claims 34-42 depend on Claim 33. Thus, Claims 22-42 are separately patentable over the cited references.

Claims 22-42 implicate both the anticipation rejection, based solely upon *Schwab*, and the obviousness rejection, based upon the combination of *Schwab* and *Ishida*. Thus Appellants address both of these issues with respect to Claim 22-42.

A. Claims 22-24 and 26-42 are patentable over *Schwab*, because *Schwab* fails to describe, either expressly or inherently, every element of these claims.

Once again, to support a rejection under 35 U.S.C. §102(e), the Examiner must show that each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Appellants respectfully submit that *Schwab* fails to teach each and every element of any of Appellants' claims. Consider Appellants' Claim 22, which recites:

> 22. A video surveillance system, comprising:
> a client operable to perform a financial transaction, the client operable to generate data from the financial transaction, the client having a camera operable to generate video of the financial transaction, the client operable to accumulate and store the data and video as a digital file, the client operable to transmit the digital file across a communications network; and
> a server coupled to the client using the communications network, the server operable to receive the digital file upon connection with the client, and to display the video and data.

Claim 22 includes a number of limitations similar to those of Claim 1 that, as discussed above, are not shown by *Schwab*. Thus without even addressing the additional aspects, Claim 22 is patentable over *Schwab*. However, Claim 22 includes additional patentable limitations that *Schwab* fails to disclose. Specifically, Claim 22 requires:

> the client operable to accumulate and store the data and video [of the financial transaction] as a digital file, the client operable to transmit the digital file across a communications network

Appellants respectfully submit that *Schwab* fails to teach these aspects, either expressly or inherently. Thus for at least the reasons discussed above with respect to the claims in Group 1 and here with respect to Group 2, Appellants respectfully request the Board to reverse the Examiner's rejection under Section 102 to Claims 22 and 33 and their respective dependent claims.

B. Claims 25 and 36 are patentable over *Schwab* in view of *Ishida* because the combination of these references is improper and because these references fail to teach or suggest of all elements these claims.

Claims 25 and 36 include limitations similar to those discussed above with respect to Claims 4 and 14 of Group 1. For analogous reasons to those discussed above, Appellants submit that the proposed *Schwab-Ishida* combination is improper, since it fails every

requirement for a *prima facie* case of obviousness. Therefore, Appellants respectfully request the Board to reverse the Section 103 rejection of Claims 25 and 36.

CONCLUSION

Appellants have demonstrated that the present invention, as claimed in Claims 1-42, is patentably distinct from the cited art. Accordingly, Appellants respectfully request that the Board reverse the rejections in the Final Office Action and instruct the Examiner to issue a Notice of Allowance of Claims 1-42.

Appellants enclose a check in the amount of $165.00 to cover the fee for this Appeal Brief. The Commissioner is hereby authorized to charge any extra fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: August 23, 2004

PTO Customer No. 05073

APPENDIX-CLAIMS PRESENTED ON APPEAL

1.   (Previously presented) A video surveillance system, comprising:

a client operable to perform a financial transaction, the client further operable to generate data from the financial transaction, the client having a camera operable to generate video of the financial transaction, the client operable to transmit the data and video using a communications network; and

a server coupled to the client using the communications network, the server operable to receive the data and video from the client and to display the video and data in real-time.

2.   (Original) The system of Claim 1, wherein the client comprises a point-of-sale device and the financial transaction comprises the sale of an item.

3.   (Original) The system of Claim 1, wherein the client comprises an automated teller machine and the financial transaction comprises a cash withdrawal.

4.   (Previously presented) The system of Claim 1, wherein the client comprises a microphone operable to generate audio of the financial transaction, the client operable to transmit data, video, and audio over the communications network.

5.   (Original) The system of Claim 1, wherein the server forms a data window from the data and a video window from the video and overlays the data window on the video window.

6.   (Original) The system of Claim 1, wherein the server presents data from a plurality of financial transactions as a plurality of data windows, presents video from a plurality of video sources as a plurality of video windows, and associates the data windows with the corresponding video windows.

7.   (Original) The system of Claim 6, wherein the server receives user input to specify one of the data windows to display the video window associated with the specified data window.

8.   (Original) The system of Claim 6, wherein the server associated with the financial transaction automatically switches the video window to the video associated with the data in response to the presence or content of data.

9.   (Original) The system of Claim 6, wherein the server displays the appropriate video window and data window upon changes in one of the plurality of video windows.

10.   (Previously presented) The system of Claim 1, wherein the client stores accumulated data and video of the financial transaction and transmits the data and video when the client communicates with the server.

11.   (Previously presented) A video surveillance method, comprising:
performing a financial transaction;
generating data from the financial transaction;
generating video of the financial transaction;
transmitting data and video in real-time from a client using a communications network;
receiving the data and video at a server using a communications network; and
presenting data and video on a display at the server.

12.   (Original) The method of Claim 11, wherein the client comprises a point-of-sale device and the financial transaction comprises the sale of an item.

13.   (Original) The method of Claim 11, wherein the client comprises an automated teller machine and the financial transaction comprises a cash withdrawal.

14.   (Previously presented) The method of Claim 11, further comprising the steps of:
generating audio of the financial transaction; and
transmitting the audio to the server.

15.   (Original) The method of Claim 11, wherein the step of presenting comprises:

presenting data in a data window as a representation of the financial transaction;

presenting video in a video window; and

overlaying the data window on the video window.

16.   (Original) The method of Claim 11, wherein the step of presenting comprises:

presenting data as a plurality of data windows associated with a plurality of financial

transactions;

presenting video as a plurality of video windows associated with a plurality of video

sources; and

associating the data window with the corresponding video window.

17.   (Original) The method of Claim 16, further comprising the step of updating

the video window and the data window in response to the presence or content of the data in

one of the plurality of data windows.

18.   (Original) The method of Claim 16, further comprising the step of updating

the video window and the data window in response to a change in one of the plurality of

video windows.

19.   (Original) The method of Claim 16, further comprising the steps of:

receiving a user selection; and

updating the video window and the data window in response to the selection.

20.   (Previously presented) The method of Claim 11, further comprising the steps

of:

storing accumulated financial data and associated video in a digital file at the client;

transmitting the digital file from the client to the server upon connection of the client

to the server.

21.   (Original) The method of Claim 20, wherein the digital file contains financial

records accumulated since last connection.

22.   (Previously presented) A video surveillance system, comprising:

a client operable to perform a financial transaction, the client operable to generate data from the financial transaction, the client having a camera operable to generate video of the financial transaction, the client operable to accumulate and store the data and video as a digital file, the client operable to transmit the digital file across a communications network; and

a server coupled to the client using the communications network, the server operable to receive the digital file upon connection with the client, and to display the video and data.

23.   (Original) The system of Claim 22, wherein the client comprises a point-of-sale device and the financial transaction comprises the sale of an item.

24.   (Original) The system of Claim 22, wherein the client comprises an automated teller machine and the financial transaction comprises a cash withdrawal.

25.   (Original) The system of Claim 22, wherein the client comprises a microphone operable to generate audio of the financial transaction, the client operable to transmit data, video, and audio over the communications network.

26.   (Original) The system of Claim 22, wherein the server forms a data window from the data and a video window from the video and overlays the data window on the video window.

27.   (Original) The system of Claim 22, wherein the server presents data from a plurality of financial transactions as a plurality of data windows, presents video from a plurality of video sources as a plurality of video windows, and associates the data windows with the corresponding video windows.

28.   (Original) The system of Claim 27, wherein the server receives user input to specify one of the data windows to display the video window associated with the specified data window.

29.   (Original) The system of Claim 27, wherein the server associated with the financial transaction automatically switches the video window to the video associated with the data in response to the presence or content of data.

30.   (Original) The system of Claim 27, wherein the server displays the appropriate video window and data window upon changes in one of the plurality of video windows.

31.   (Original) The system of Claim 22, wherein the client stores accumulated data associated with the financial transaction and transmits the data when the client communicates with the server.

32.   (Original) The system of claim 22, wherein the server displays the digital file based on a configuration file.

33.   (Previously presented) A video surveillance method, comprising:
performing a financial transaction;
generating data from the financial transaction;
generating video of the financial transaction;
accumulating generated data and video for multiple financial transactions;
storing the accumulated data and video as a digital file until the client connects to the server;
transmitting the digital file using a communications network upon connection of the client and the server;
receiving the data and video at a server; and
presenting data and video on a display at the server.

34.   (Original) The method of Claim 33, wherein the client comprises a point-of-sale device and the financial transaction comprises the sale of an item.

35.   (Original) The method of Claim 33, wherein the client comprises an automated teller machine and the financial transaction comprises a cash withdrawal.

36.   (Previously presented) The method of Claim 33, further comprising the steps of:

generating audio of the financial transaction; and

transmitting the audio to the server.

37.   (Original) The method of Claim 33, wherein the step of presenting comprises:

presenting data in a data window as a representation of the financial transaction;

presenting video in a video window; and

overlaying the data window on the video window.

38.   (Original) The method of Claim 33, wherein the step of presenting comprises:

presenting data as a plurality of data windows associated with a plurality of financial transactions on a display at the server;

presenting video as a plurality of video windows associated with a plurality of video sources on a display at the server; and

associating the data window with the corresponding video window.

39.   (Original) The method of claim 38, further comprising the step of updating the video window and the data window in response to the presence or content of the data in one of the plurality of data windows.

40.   (Original) The method of Claim 38, further comprising the step of updating the video window and the data window in response to a change in one of the plurality of video windows.

41.   (Original) The method of Claim 38, further comprising the steps of:

receiving a user selection; and

updating the video window and the data window in response to the selection.

42.   (Original) The method of Claim 33, wherein the digital file contains financial records accumulated since last connection.